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Docket No. RUC-100DFDXC2
Serial No. 09/725,828Remarks

Claims 1-34 were originally pending in the subject application. By an Amendment dated March 17, 2004, the applicant cancelled claims 2, 3, 7-11 and 15-23 and acknowledged the withdrawal of claims 24-34 as been directed to non-elected subject matter. By this Amendment, the applicant has amended claims 1, 5 and 13 and has canceled claims 6 and 12. The applicant has further canceled claims 24-34 as being drawn to non-elected subject matter. No new subject matter has been added by this amendment. Accordingly, claims 1, 4, 5, 13 and 14 are now before the Examiner for consideration.

The amendments set forth herein should not be interpreted to indicate that the applicant has agreed with, or acquiesced to, the rejections set forth in the outstanding Office Action. Favorable consideration of the claims now presented, in view of the remarks and amendments set forth herein, is earnestly solicited.

The applicant wishes to thank the Examiner for the indication of allowable subject matter.

Claims 1-3 and 5-14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,583,602 (Gruber) in view of U.S. Patent No. 5,441,174 (Sperry). The applicant respectfully traverses this grounds for rejection because the cited references, alone or in combination, do not teach or even suggest the applicant's device that is specifically designed for administering an appropriate amount (250 to 750 ml) of a pressurized dispersed stream of sterile wound irrigation solution, with a splash guard to prevent biological contamination.

The Gruber patent, which issued nearly 35 years ago, provides a liquid dispensing device that is designed to reduce unwanted drippage. The Gruber jug is indicated to be particularly useful for administering weed killers, or other dangerous chemicals, because unwanted drippage is reduced.

The applicant has argued, among other things, that the Gruber device is from a non-analogous art and that dispensers for weed killers would not be the art to which medical technicians would look for ideas on how to improve wound irrigation. In this regard, please note that scores of patents relating to wound irrigation have issued since the Gruber patent and it does not appear that the Gruber patent has ever been previously cited in the context of wound irrigation.

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Even if the Gruber patent is considered to be from an analogous art, there would have been no reason to modify the Gruber jug to arrive at the current invention. In this regard, please note that the Gruber device was concerned with limiting unwanted disbursement of a fluid. By contrast, the current invention facilitates rapid generation of a dispersed stream of fluid at sufficient pressures to dislodge bacteria and contaminants. Although the Gruber disclosure is quite brief, one can assume that a pressurized concentrated stream would be undesirable for administering a weed killer, and that the holes of the Gruber jug would, therefore, be larger than the holes of the device of the current invention. This interpretation is consistent with the figures of the Gruber patent.

Additionally, and perhaps more importantly, there would have been no reason to provide the Gruber device with sterile saline and a splashguard. These limitations of the current applicant's claims are directly related to the use of the applicant's device for wound irrigation. This unique and advantageous method has already been determined to be patentable as evidenced by the issuance of U.S. Patent Nos. 5,830,197 and 6,468,253. Please note that the Sperry *et al.* patent was considered by the Patent Office in each of the applications that resulted in the issuance of claims to the applicant's method.

Thus, at the time of the subject invention, there was no reason to modify the Gruber jug so that it held only 250 ml to 750 ml, had small holes, sterile saline, and a splash guard.

Certainly, there is nothing in the Sperry *et al.* reference that would lead one skilled in the art towards using a device for wound irrigation that had the characteristics of the Gruber jug. In this regard Sperry *et al.* state:

In the method for cleaning a wound or abrasion, a wound cleansing solution is provided which is formed into a pressurized stream which is substantially equivalent to that which is generated by a human hand operating a 30 to 60 milliliter syringe... (emphasis added) (column 2 lines 38-42)

...

It was found that with the above parameters it is possible to provide a stream 126 of wound cleansing solution which has approximately the same characteristics as that produced by a hand-held 30 to 60 milliliter syringe... (emphasis added) (column 6 lines 1-5)

Thus, the Sperry *et al.* disclosure merely perpetuates the exact problem that the applicant's invention is designed to overcome. Clearly, the Sperry *et al.* method, which only serves to automate the same old ineffective procedure, would in no way suggest the applicant's unique device that facilitates the use of a 250 ml to 750 ml of sterile fluid applied in a dispersed stream.

Thus, there would not be any motivation for the skilled artisan to modify the teachings of Gruber in view of Sperry *et al.* Sperry *et al.* describes an aerosol spray bottle; therefore, Gruber's teachings with respect to avoiding drippage from a squeeze jug are not applicable to the Sperry *et al.* device at all. Moreover, Sperry *et al.* repeatedly emphasize the ability to mimic the stream produced by a syringe. This, of course, is precisely the approach that has been rejected by the current applicants in arriving at the instant invention.

The mere fact that the purported prior art could have been modified or applied in a manner to yield applicant's invention would not have made the modification or application obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Moreover, as expressed by the CAFC, to support a §103 rejection, "[b]oth the suggestion and the expectation of success must be founded in the prior art" *In re Dow Chemical Co.*, *supra* at 1531. In the references cited in support of the §103 rejection, one finds neither.

The applicant has provided a unique device, having a compressible reservoir, a sterile fluid, and multiple ports, which facilitates an admittedly simple, but very advantageous, wound irrigation method. The method has been patented in the applicant's parent applications. Were it not for the new method, there would be no reason to modify the prior art to arrive at the device that is currently claimed. Accordingly, the applicant respectfully submits that the device, as now claimed, is not obvious. Thus, applicants respectfully request that this rejection under 35 USC §103 be reconsidered and withdrawn.

In view of the foregoing remarks and amendment, the applicant believes that the currently pending claims are in condition for allowance, and such action is respectfully requested.

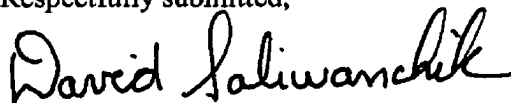
The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

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The applicant also invites the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



David R. Saliwanchik

Patent Attorney

Registration No. 31,794

Phone: 352-375-8100

Fax No.: 352-372-5800

Address: 2421 N.W. 41st Street, Suite A-1
Gainesville, FL 32606-6669

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